



## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Born Alive Infant Protection Acts (BAIPA) are legislative enactments intended to establish rights, legal protections, duties or standards of care for infants born alive regardless of whether the birth was the result of an abortion.

In 2002, Congress passed and the President signed into law a federal BAIPA. The federal BAIPA requires that, in any interpretation or determination of the meaning of any Act of Congress or any administrative rule or ruling, certain terms (person, human being, child, and individual) include a child born alive at any stage of development.<sup>1</sup> The law defines "born alive" to be:

the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.<sup>2</sup>

The federal law explicitly provides that it should not be interpreted to provide or deny any legal right to a person prior to being born alive.<sup>3</sup>

Many states have BAIPAs, and many use some variation of the federal definition of "born alive". However, state BAIPAs usually impose specific standards and duties, rather than, or in addition to, using statutory construction guidance to establish legal status.<sup>4</sup>

---

<sup>1</sup> P.L. 107-207; 1 U.S.C. 8 (2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See, e.g., Cal. Health & Safety Code s. 123420-123450 (2010) (providing born alive infants subsequent to abortion have the same right to medical care as infants born otherwise); Del. Code Ann. Tit. 17 s. 1795 (2010) (medical practitioners must exercise the same degree of medical skill, care and diligence for infants born as a result of an abortion as for other infants); Ill. Comp. Stat. 510/6 (2010) (medical practitioners must exercise the same degree of medical skill, care and diligence for infants born as a result of an abortion as for other infants); Mich. Comp. Laws s. 333.1071 (2010) (requiring physicians to provide immediate medical care to the infant); Wash. Rev. Code 18.71.240 (2010) (providing born alive infants subsequent to abortion have the same right to medical care as infants born otherwise);. *But, see*, Ill. Comp. Stat. 70/1.36 (2010) (Illinois BAIPA also uses the federal language).

In 2006, an improperly performed abortion resulted in the live birth of a baby girl in a Hialeah abortion clinic. An owner of the clinic placed the baby in a plastic bag, closed it, and placed the bag in a trash can.<sup>5</sup> Law enforcement officials recovered the remains over a week later, upon their third search.<sup>6</sup> The Miami-Dade County Medical Examiner determined the infant had breathed prior to its death.<sup>7</sup> The Department of Health Board of Medicine initiated licensure action against the physician, and successfully revoked his license, for failure to maintain medical records, falsifying medical records, failing to properly dispose of the infant's remains, failing to properly care for the mother, delegating authority to an unlicensed person, and other violations.<sup>8</sup> The physician was not disciplined for failure to provide medical care to the infant.

Current Florida law does not expressly address duties to or rights of infants born alive subsequent to an abortion.

### **Effect of Proposed Changes**

The bill creates s. 390.01112, F.S., the Born Alive Infant Protection Act (Act). The Act defines "born alive" as the complete expulsion or extraction of a human infant, at any stage of development, who breathes, has a beating heart, umbilical cord pulsation, or voluntary muscle movement after the expulsion or extraction.

The Act provides that infants born alive subsequent to an abortion have the same rights, powers and privileges as children born alive not subsequent to an abortion. The Act also requires health care practitioners to exercise the same level of professional skill, care and diligence to preserve the life of an infant born alive subsequent to an abortion as they would for an infant born alive not subsequent to an abortion.

The bill requires health care practitioners with actual knowledge of a violation of the Act to report the violation to the Department of Health. The bill provides that a violation of the Act is grounds for licensure disciplinary action, which includes license suspension or revocation, practice restriction, fines, probation, corrective action, and letters of reprimand or concern.<sup>9</sup>

The Act defines "health care practitioners" by cross-reference to the definition in s. 456.001, F.S., which includes many practitioners regulated by the Department of Health and its various Boards. Accordingly, the Act's requirements apply to: acupuncturists (chapter 457); medical doctors (chapter 458); osteopathic doctors (chapter 459), chiropractors (chapter 460); podiatrists (chapter 461); naturopaths (chapter 462); optometrists (chapter 463), nurses (chapter 464); pharmacists (chapter 465); dentists and dental hygienists (chapter 466); midwives (chapter 467); speech, occupational, and respiratory therapists (parts I, III, and V of chapter 468); nursing home administrators (part II of chapter 468); dietitians/nutritionists (part X of chapter 468); athletic trainers (part XIII of chapter 468); orthotists and prosthetists (part XIV of chapter 468); electrologists (chapter 478); massage therapists (chapter 480); clinical lab personnel (part III of chapter 483); medical physicists (part IV of chapter 483); opticians and hearing aid specialists (chapter 484); physical therapists (chapter 486); psychologists (chapter 490); and social workers and counselors (chapter 491).

## **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 390.01112, F.S., relating to the Born Alive Infant Protection Act.

**Section 2:** Provides an effective date of July 1, 2010.

---

<sup>5</sup> Fla. Dept. of Health v. Renelique, Feb. 19, 2009, No. 08-003964 (DOAH 2009).

<sup>6</sup> Id. at 12.

<sup>7</sup> Id.

<sup>8</sup> Id. at 14-18.

<sup>9</sup> S. 456.072(2), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

Because House Bill 1063 does not regulate or limit access to abortions, it does not appear to directly implicate the right to privacy guaranteed by Art. 1 Sec. 23 of the Florida Constitution.

### B. RULE-MAKING AUTHORITY:

The Department of Health and relevant Boards have sufficient rule-making authority to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES